

December 11, 2018

Ms. Marie Brady  
Ecotone Ecological Restoration  
2120 High Point Road  
Forest Hill, MD 21050

Re: Moore's Branch Stream Restoration at Park School  
Forest Conservation Variance  
Tracking #02-18-2858

Dear Ms. Brady:

This Department received a request for a variance from Baltimore County's Forest Conservation Law on November 20, 2018. The request proposes to remove or critically impact 17 of the 45 specimen trees within the scope of restoring the main branch of Moore's Run (Use III) that generally flows west to east through the school property. All of the specimen trees to be removed are within forest, and two are in poor condition. The stream restoration is being done to reduce erosion and protect the school's property. If additional specimen trees were to be retained, the resultant stream restoration would not be as effective. Furthermore, this restoration is being funded through a Chesapeake and Atlantic Coastal Bays Fund Grant and is not being done for mitigation or TMDL credit, nor is it related to any development activity.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The petitioner is seeking to restore an eroding stream to protect the school property. However, the property has been operating as a school for decades. Therefore, denying the variance would not deprive the petitioner of all beneficial use of the property, and we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight in removing the specimen trees is due to unique circumstances associated with their location relative to the stream system to be restored rather than general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. Granting the variance would allow the stream to be properly restored, which would not affect the character of the neighborhood. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen trees are in the way of performing the stream system restoration necessary to improve water quality and habitat of the Use III stream. Therefore, we find that rather than adversely affecting water quality, granting the variance will improve water quality; thus, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. This variance is necessitated by the location of the specimen trees relative to the required area of disturbance rather than a condition or circumstance resulting from actions by the petitioner. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Allowing removal of 15 viable specimen trees would be consistent with the spirit and intent of the Forest Conservation Law given that water quality will be improved, there will be no net loss of forest, and 24 other viable specimen trees will be protected during the restoration work. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. A note must be on all subsequent plans stating:

“A special variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Forest Conservation

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Law on December 11, 2018. Conditions were placed on this variance to ensure the spirit and intent of the Forest Conservation Law was met including posting of protective signage along the Forest Buffer & Forest Conservation Easement as well as reforestation.”

2. A final forest conservation plan (FCP) shall reflect the terms of this variance and be approved by EPS prior to permit issuance.
3. All measures specified on the approved FCP to protect the specimen trees to remain shall be installed prior to EPS approval of the grading permit.
4. There is no mitigation required for removing the specimen trees since they are in forest to be mitigated in accordance with the approved FCP.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the next page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Acting Director

DVL:ges

- c. Ms. Joan Webber, Director, Park School  
Ms. Marian Honeczy, Maryland Dept. of Natural Resources

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I/we agree to the above conditions to bring my/our property into compliance with  
Baltimore county's Forest Conservation Law.

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School Representative's Signature

Date

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School Representative's Printed Name